

AMENDED IN SENATE JUNE 24, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 70**

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**Introduced by Assembly Member ~~Duvall~~ Norby**

December 12, 2008

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~~An act to add Section 313.5 to the Education Code, relating to English learners.~~ *An act to add and repeal Section 66019.7 of the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 70, as amended, ~~Duvall~~ Norby. ~~English learners.~~ *Public postsecondary education: genetic testing.*

*(1) Existing law, known as the Donahoe Higher Education Act, sets forth the missions of the various segments of public postsecondary education in this state. The segments of public postsecondary education in this state are the California State University, the University of California, and the California Community Colleges. The provisions of the Donahoe Higher Education Act apply to the University of California only to the extent that the Regents of the University of California act by resolution to make them applicable.*

*This bill would add to the Donahoe Higher Education Act a provision prohibiting the California State University from, and requesting the University of California to refrain from, making an unsolicited request to an enrolled or prospective student of that segment for a DNA sample for the purpose of genetic testing. The bill would specify that it does not prohibit a licensed health care provider in a university facility from performing genetic testing and counseling in the course of a patient's medical care.*

*The bill would require the University of California to report, on a quarterly basis, in writing, the total amount of any expenditures, irrespective of source, the university makes in order to make an unsolicited request or requests to any enrolled or prospective student of that segment for a DNA sample for the purpose of genetic testing. The bill would require that the first of these quarterly reports be submitted to the Controller, the Governor, and the Legislature on or before January 1, 2011, and include all university expenditures for this purpose that have occurred prior to the date of the report.*

*The bill would require the Controller to revert to the General Fund an amount equal to the amount of any expenditures reported pursuant to the bill from any unencumbered moneys that have been previously appropriated from the General Fund to the University of California. The bill would require that subsequent quarterly reports be submitted on or before January 1, April 1, July 1, and October 1 of each year while this provision is operative.*

*These provisions would be repealed on January 1, 2015.*

*(2) This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law requires a school district that has one or more pupils who are English learners to assess the English language development of each pupil in order to determine the level of English proficiency of the pupil. The State Department of Education, with approval of the State Board of Education, is required to establish procedures for conducting the assessment and for the reclassification of a pupil from English learner to proficient in English. These reclassification procedures are required to use multiple criteria, including the English language development test, teacher evaluation, parental opinion and consultation, and comparison of the performance in basic skills of the pupil against a range of performance in basic skills of English proficient pupils.~~

~~This bill would require the department, as part of its duties in administering the English language development test, to gather from each school district that has one or more English learners the criteria that the district uses for the reclassification of a pupil from English learner to proficient in English and to summarize and report the criteria it receives from school districts on the Internet Web site of the department in a manner that makes the criteria easily accessible to members of the public.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature finds and declares all of the*  
2 *following:*  
3     (a) *The collection, testing, and storage of genetic material pose*  
4 *unique challenges to protecting individual privacy.*  
5     (b) *Recent research demonstrates that even seemingly*  
6 *anonymous genetic data can be used to identify individual research*  
7 *subjects.*  
8     (c) *The Protection of Human Subjects in Medical*  
9 *Experimentation Act (Chapter 1.3 (commencing with Section*  
10 *24170) of Division 20 of the Health and Safety Code) requires that*  
11 *subjects receive substantial written and verbal explanations before*  
12 *they can provide informed consent.*  
13     (d) *Universities design programs to engage the student body*  
14 *and encourage broad participation, and students may feel coerced*  
15 *to participate in official activities involving widespread genetic*  
16 *testing.*  
17     (e) *The federal Government Accountability Office concluded in*  
18 *2006 that genetic tests to inform dietary and nutritional choices*  
19 *“are medically unproven,” “mislead consumers,” and “do not*  
20 *provide meaningful information.”*  
21     (f) *A student who voluntarily provides DNA to a public*  
22 *institution of higher education could suffer consequences later in*  
23 *life, if some future occurrence causes the confidentiality of the*  
24 *DNA sample to be compromised in some manner.*  
25     (g) *For example, in May 2009, a hacking attack at the University*  
26 *of California, Berkeley, compromised the security of the medical*  
27 *information of approximately 100,000 current and former students.*  
28     SEC. 2. *Section 66019.7 is added to the Education Code, to*  
29 *read:*  
30     66019.7. (a) *Notwithstanding any other law:*  
31     (1) *The California State University is prohibited from, and the*  
32 *University of California is requested to refrain from, making an*  
33 *unsolicited request to an enrolled or prospective student of that*  
34 *segment for a DNA sample for the purpose of genetic testing. This*  
35 *section does not prohibit a licensed health care provider in a*

1 university facility from performing genetic testing and counseling  
2 in the course of a patient's medical care.

3 (2) The University of California shall report, on a quarterly  
4 basis, in writing, the total amount of any expenditures, irrespective  
5 of source, the university makes in order to make an unsolicited  
6 request or requests to any enrolled or prospective student of that  
7 segment for a DNA sample for the purpose of genetic testing. The  
8 first of the quarterly reports required by this section shall be  
9 submitted to the Controller, the Governor, and the Legislature on  
10 or before January 1, 2011, and shall report all university  
11 expenditures for this purpose that have occurred prior to the date  
12 of the report. Subsequent quarterly reports under this section shall  
13 be submitted on or before January 1, April 1, July 1, and October  
14 1 of each year while this section is operative.

15 (3) The Controller shall revert to the General Fund an amount  
16 equal to the amount of any expenditures reported pursuant to  
17 paragraph (2) from any unencumbered moneys that have been  
18 previously appropriated from the General Fund to the University  
19 of California.

20 (b) (1) A report to be submitted pursuant to paragraph (2) of  
21 subdivision (a) shall be submitted in compliance with Section 9795  
22 of the Government Code.

23 (2) Pursuant to Section 10231.5 of the Government Code, this  
24 section is repealed on January 1, 2015.

25 SEC. 3. This act is an urgency statute necessary for the  
26 immediate preservation of the public peace, health, or safety within  
27 the meaning of Article IV of the Constitution and shall go into  
28 immediate effect. The facts constituting the necessity are:

29 In order to protect students of the California State University  
30 and the University of California from unsolicited requests to submit  
31 to genetic testing prior to the commencement of the 2010–11  
32 academic year, it is necessary that this act take effect immediately.

33 ~~SECTION 1. Section 313.5 is added to the Education Code,~~  
34 ~~to read:~~

35 ~~313.5. (a) As part of its duties in administering the English~~  
36 ~~language development test, the department shall gather from each~~  
37 ~~school district that has one or more English learners the criteria~~  
38 ~~that the district uses for the reclassification of a pupil from English~~  
39 ~~learner to proficient in English. The department shall summarize~~  
40 ~~and report the criteria it receives from school districts on the~~

- 1 ~~Internet Web site of the department in a manner that makes the~~
- 2 ~~criteria easily accessible to members of the public.~~
- 3 ~~(b) For purposes of this section, “school district” includes a~~
- 4 ~~county office of education and a charter school.~~